

UNITED STATES DISTRICT COURT  
for the  
WESTERN DISTRICT OF WASHINGTON

ERIC BOSTON )  
individually, ) NO.  
Plaintiff, )  
v. )  
KITSAP COUNTY, a Municipal )  
Corporation organized under )  
the laws of the State of )  
Washington and CONMED, INC., )  
a Foreign Corporation doing )  
business in Kitsap County, )  
Washington. )  
Defendants. )

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I. JURISDICTION & VENUE

1.1 Plaintiff, ERIC BOSTON, is, and at all relevant times was, a resident of Snohomish County, Washington.

1.2 The defendant, KITSAP COUNTY, is a Municipal Corporation and a political subdivision of the State of Washington, and is located in Kitsap County, Washington.

1.3 Defendant CONMED, INC., is a Foreign Corporation registered in the State of Maryland, doing business in and with KITSAP COUNTY, Washington.

COMPLAINT FOR VIOLATION  
OF CONSTITUTIONAL RIGHTS  
UNDER 42 U.S.C. §1983 AND  
FOR NEGLIGENCE

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1 1.4 All acts and omissions alleged in this complaint occurred in  
2 Kitsap County, Washington.

3 1.5 An action herein is a claim brought under 42 U.S.C. §1983, and  
4 states a Federal Claim.

5 1.6 Federal Courts have original jurisdiction over this case  
6 pursuant to 28 U.S.C. §§ 1331, 1441 and 42 U.S.C. §1983. The  
7 court can exercise supplemental jurisdiction over other claims  
8 and other parties under 28 U.S.C. §1337(a), as the claims "are  
9 so related to claims in the action within such original  
10 jurisdiction that they form part of the same case or  
11 controversy under Article III of the United States  
12 Constitution."

13 1.7 Plaintiff has followed the claims notice procedures of RCW  
14 4.96.020, and waited the required period of time before filing  
this action.

15 II. FIRST CAUSE OF ACTION - VIOLATION OF PLAINTIFF'S  
16 CIVIL RIGHTS UNDER 42 U.S.C. §1983

17 2.1 On January 3, 2011, Defendant KITSAP COUNTY operated a public  
18 jail facility under color of law at 614 Division Street in  
19 Port Orchard, Kitsap County, Washington for housing  
20 incarcerated inmates for both pretrial and post conviction  
21 incarceration.

22 2.2 Defendant KITSAP COUNTY has a non-delegable duty to provide  
23 appropriate and necessary medical services to those  
24 incarcerated in its jail facility, to ensure the inmates'

1       health, welfare, and safety.

2   2.3 Defendant KITSAP COUNTY contracted with defendant, CONMED,  
3       INC., to provide inmate healthcare services in an attempt to  
4       meet its duty, at a flat rate of compensation, regardless of  
5       medical needs of the inmate population, and the costs thereof.

6   2.4. The practical effect of this flat rate compensation package is  
7       that the profit of CONMED, INC. declines for every pill,  
8       procedure and expense provided for medical care of inmates.

9   2.5 CONMED, INC. has a policy, express or de facto, of refusing to  
10      provide pain and other medications to inmates, and directs or  
11      pressures its medical care providers to follow this policy.

12   2.6 Defendant CONMED, INC., hired and supervised numerous  
13      employees, whose names are not presently known to plaintiff,  
14      to act as agents on its behalf in fulfilling its contract with  
15      defendant, KITSAP COUNTY.

16   2.7 The medical staff at the Kitsap County Jail frequently deals  
17      with persons being arrested in all states of sobriety, and on  
18      all forms of intoxicants and drugs, prescribed and otherwise.

19   2.8 The medical staff at the Kitsap County Jail has an obligation  
20      to know how to address the needs of all inmates, and  
21      particularly those with special needs due to drug dependency,  
22      and those with chronic pain.

23   2.9 Plaintiff ERIC BOSTON was arrested during a traffic stop by  
24      the Kitsap County Sheriff's Office on January 3, 2011 on a  
25      misdemeanor charge of violation of a no contact order for

1 being peacefully in the presence of the protected person with  
2 her consent, and was taken to the Kitsap County Jail for  
3 processing to be held until he could be brought before a  
4 court.

5 2.10 A court later made a determination to hold ERIC BOSTON on bail  
6 pending trial, which bail he could not raise, and as a  
7 consequence was a pretrial detainee until his plea of guilty  
8 to the charge of Violation of No Contact Order and his release  
9 from the Kitsap County Jail on February 14, 2011, and transfer  
10 to the Snohomish County Jail.

11 2.11 Plaintiff, ERIC BOSTON also had a warrant from Snohomish  
12 County for noncompliance with past sentencing conditions, and  
13 was therefore held as a convicted person until he could be  
14 delivered to Snohomish County for processing his alleged  
15 probation violations.

16 2.12 Before his January 3, 2011 arrest, Plaintiff ERIC BOSTON had  
17 a chronic spinal condition with back pain, and was lawfully on  
18 opiate medications, Oxycodone and Oxycontin for that pain,  
19 prescribed by his physician, Dr. Waltz. He had an opiate  
20 dependency on his arrival at the Kitsap County jail as he had  
21 been on those prescribed opiate medications for a considerable  
22 period of time.

23 2.13 Before his January 3, 2011 arrest, Plaintiff ERIC BOSTON had  
24 been diagnosed with Bi-Polar Mood Disorder, a chronic  
25 condition, and was lawfully on medications to control that

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1 condition, Lithium, as prescribed by his physician, Dr. Waltz.

2 2.14 Plaintiff ERIC BOSTON came to the Kitsap County jail with the  
3 valid, written prescriptions for those medications.

4 2.15 Defendant CONMED, Inc. following its policy of not providing  
5 medications due to cost considerations, refused to honor those  
6 prescriptions, and thereby forced Plaintiff ERIC BOSTON to  
7 undergo painful opiate withdrawal and illness, as well as  
8 increased back pain from his pre-existing chronic back  
9 condition. By failing to give him his Lithium, his Lithium  
10 levels fell below therapeutic dosage, and he had increase in  
11 his bi-polar symptoms, including manic euphoria, and  
12 depression, and inability to sleep.

13 2.16 On January 13, 2011, Plaintiff ERIC BOSTON suffered injury at  
14 the Kitsap County jail facility, when he tripped over an angle  
15 iron placed in the doorway to his cell, and fell down the  
16 concrete and steel stairs on his back, headfirst. This injury  
17 is more fully described in Count II of this complaint, and is  
18 incorporated by this reference.

19 2.17 As a result of this January 13, 2011 injury incident,  
20 Plaintiff ERIC BOSTON was transferred by ambulance while  
21 remaining in custody to Harrison Medical Center for evaluation  
22 and treatment. Harrison Medical Center performed an objective  
23 examination of Plaintiff ERIC BOSTON, provided him with 4  
24 prescriptions: a corticosteroid to reduce inflammation, a  
25 muscle relaxer, and two opiate medications: Oxycodone and

1 Oxycontin. They released him back to the Kitsap County jail  
2 with discharge instructions to take the medications and seek  
3 a follow up appointment with his regular doctor.

4 2.18 Harrison Medical Center staff formed a diagnosis of Plaintiff  
5 ERIC BOSTON as Low Back Strain and Radiculopathy.  
6

7 2.19 After the injury of January 13, 2011, as a direct result of  
8 the low back injury suffered, Plaintiff ERIC BOSTON could not  
9 control his bladder, and was urine incontinent. When he asked  
10 for accommodation for this infirmity, by provision of  
11 incontinence supplies and garments, his request was denied  
12 until very shortly before his release from the facility on  
13 February 14, 2011, when some incontinence undergarments were  
14 given him. For approximately a month, Plaintiff ERIC BOSTON  
15 suffered from humiliation and embarrassment at this condition.  
16 Plaintiff ERIC BOSTON was made to clean up his soaked bedding  
17 in the morning.  
18

19 2.20 Plaintiff ERIC BOSTON had another fall on January 21, 2011,  
20 and an episode of incontinence, and was taken to Harrison  
21 Medical Center for care. On this occasion, Harrison Medical  
22 Center staff performed an examination of Plaintiff ERIC  
23 BOSTON, and found that he had poor rectal tone and loss of  
24 nerve function, diagnosed him with Cauda Aquina Syndrome, and  
25 transferred him and his care to Harborview Medical Center.  
26

27 2.21 On January 22, 2011, Harborview did a full medical workup of  
28 Plaintiff ERIC BOSTON, and made the following diagnosis: (1)

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1           subtherapeutic lithium levels, (2) subregimen Sleep-Wake  
2           Cycle, (3) possible bilateral vitreous detachments as a result  
3           of his fall or transient visual obscurations and (4) possible  
4           right sacroiliac radiculopathy, or nerve root compression.  
5           Imaging studies verified disc dessication at L3/4, L4/5 and  
6           L5/S1, a broad based disc bulge at L4/5 which causes mild  
7           central canal stenosis, as well as an even milder bulge at  
8           L5/S1.

9  
10          2.22 Harborview Medical Center prescribed Lithium for Bi-Polar Mood  
11          Disorder control, and opiate pain medications for pain  
12          control, including Oxycodone. He was discharged back to the  
13          Kitsap County jail with: (1) enough opiate medication to last  
14          until seen by his primary medical doctor, Dr. Ronald Waltz, at  
15          his next available appointment on Monday, January 24, 2011,  
16          (2) Discharge Medication Instructions, including additional  
17          prescriptions for opiate medications and (3) instructions for  
18          follow up appointments, testing and general medical care. He  
19          was also to be on fall precautions.

20  
21          2.23 Despite the prescriptions for opiate pain medications and  
22          directives of the physicians at Harrison Medical Center on  
23          January 13-14, 2011 and at Harborview Medical Center on  
24          January 22, 2011, with actual pain medications sent home with  
25          Plaintiff ERIC BOSTON. When Plaintiff ERIC BOSTON was  
26          returned to the jail facility on both January 14, 2011, and  
27          January 22, 2011, CONMED, INC. countermanded the pain

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1 medication prescriptions, and the corticosteroid medications,  
2 and the muscle relaxers, and denied Plaintiff ERIC BOSTON the  
3 benefits of such medications, in keeping with its cost  
4 containment policies. In the presence of Plaintiff ERIC  
5 BOSTON the jail representative told Harborview Medical Center  
6 staff to not even write the pain medication prescriptions, as  
7 they would not be filled anyway. The prescriptions were  
8 written despite the admonition.

9  
10 2.24 On February 2, 2011, counsel for Plaintiff ERIC BOSTON wrote  
11 to jail administration complaining of the lack of pain  
12 medication and lack of incontinence supplies, and asking for  
13 remediation of this failure. On February 3, 2011 counsel  
14 wrote to the Kitsap County jail asking for release of records  
15 relating to Plaintiff ERIC BOSTON and his fall of January 13,  
16 2011. On February 10, 2011, counsel wrote requesting the  
17 contract for medical services, and particularly stating that  
18 Plaintiff ERIC BOSTON was their client for a personal injury  
19 claim.  
20

21 2.25 On February 11, 2011, CONMED, INC. medical staff, believed to  
22 be the CONMED, INC. Medical Director and the regular doctor,  
23 in the presence of a jail guard, visited him in the jail  
24 facility. The Medical Director advised that he would receive  
25 pain medications and steroids, as requested in counsel's  
26 letter, BUT ONLY IF HE SIGNED A STATEMENT THAT HE CAME TO THE  
27 FACILITY WITH HIS CURRENT INJURIES. Plaintiff ERIC BOSTON  
28

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1       declined to sign it, as he insisted his lawyer should be  
2       present, and because the statement was not true. The Medical  
3       Director then presented to him a waiver of medical care, to  
4       the effect that he declined medical assistance and pain  
5       medications. The guard present told Plaintiff ERIC BOSTON he  
6       had to sign it. Plaintiff ERIC BOSTON signed it under the  
7       fear of punitive consequences if he refused to follow the  
8       directive of the guard. The guard stated that if he did not  
9       sign it, he would probably go to "the hole." Plaintiff ERIC  
10      BOSTON never wanted to waive medical care, but was given the  
11      alternative of getting appropriate care or waiving his legal  
12      rights for his injury by signing a false statement.

13      2.26 Defendants KITSAP COUNTY and CONMED, INC. were deliberately  
14      indifferent to the suffering of Plaintiff ERIC BOSTON by this  
15      repeated medication denial, and by denial of the incontinence  
16      supplies. The failure by Defendants KITSAP COUNTY and CONMED,  
17      INC. staff to take timely, reasonable, inexpensive and  
18      appropriate steps to ameliorate, mitigate and avoid the  
19      effects of opiate withdrawal for a known incarcerated opiate  
20      dependent, with a valid prescription, known to be in  
21      withdrawal distress, and known to have chronic back pain,  
22      constitutes deliberate indifference to his medical needs, and  
23      was a violation of the rights of the plaintiff. Further,  
24      promising care only if he compromised his claim against the  
25      jail facility demonstrates deliberate indifference.

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14 2.28 Plaintiff ERIC BOSTON is entitled to damages for medical and  
15 other special expenses, pain and suffering, and general  
16 damages proximately resulting from the acts of the defendants,  
17 including costs of suit and reasonable attorney fees under 42.  
18 U.S.C. §1988.

### III. SECOND CAUSE OF ACTION- NEGLIGENCE

21       3.1 Plaintiff ERIC BOSTON re-alleges by this reference the facts  
22                    contained in §2.1 through 2.28 of this complaint.

23 3.2 At the time of his incarceration with Kitsap County jail,  
24 Plaintiff ERIC BOSTON was told where he was to sleep and stay  
25 within the jail facility, and had no control over the  
26 condition of his housing.

27  
28 3.3 On January 13, 2011, Plaintiff ERIC BOSTON was detained in the  
high security area of the facility because of an infraction of

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1       the jail rules. This area is commonly called "the hole" at  
2       the facility. He was required to be in his cell 23 hours a  
3       day with one hour allowed out to stretch his legs. He was not  
4       allowed interaction with other inmates. He was also allowed  
5       out of his cell to get medications. His cell has a bed, a  
6       sink and toilet.

7       3.4 At some time after the jail was constructed, to the time of  
8       this incident, an additional security measure was taken to  
9       alter the cells: an angle iron was secured to the floor in the  
10      doorway to each cell, so that notes and other contraband  
11      cannot be passed from one inmate to another by sliding it  
12      under the door. The angle iron is approximately two inches  
13      high spanning each doorway. It also serves as a tripping  
14      hazard.

15      3.5 The doorway and angle iron crossing the doorway in the cell  
16      Plaintiff ERIC BOSTON was mandated to use is approximately  
17      four to five feet directly across from the top of a flight of  
18      fifteen concrete steps leading to a common area below.

19      3.6 Causing and permitting the continued existence of the angle  
20      iron tripping hazard near the top of the flight of stairs  
21      creates an unreasonable risk of injury to those entering and  
22      leaving the cell, and is negligence on the part of Defendant  
23      KITSAP COUNTY and the Kitsap County Jail.

24      3.7 On January 13, 2011, Plaintiff ERIC BOSTON, during provision  
25      of medications, tripped on the angle iron in the doorway of

1       his cell, and fell down the stairway, headfirst and on his  
2       back. During the fall, he slid and struck each step until he  
3       came to rest near the base of the stairs.

4       3.8 Plaintiff ERIC BOSTON was in immediate pain, had suffered  
5       injury, and had lost control of his urine, wetting himself as  
6       he lay there on the stairs.

7       3.9 911 Emergency Personnel were called, but, despite Plaintiff  
8       ERIC BOSTON's protests, Kitsap County jail and CONMED, INC.  
9       staff moved Plaintiff ERIC BOSTON from the stairs before  
10       emergency staff could arrive, causing him additional pain.  
11       When emergency personnel arrived to take him to the hospital,  
12       he was flat on the concrete floor.

13       3.10 The guard who accompanied Plaintiff ERIC BOSTON to Harrison  
14       Medical Center commented about how many people he has seen  
15       trip on the doorway angle irons, and said he did not know why  
16       they did not remove them.

17       3.11 As a direct result of the negligence of the Defendant KITSAP  
18       COUNTY, Plaintiff ERIC BOSTON was injured, suffered, and  
19       continues to suffer bodily injury and pain, emotional  
20       distress, disfigurement, and loss of bodily function.

21                  IV. PRAYER FOR RELIEF

22       For the reasons stated above, Plaintiff ERIC BOSTON prays for  
23       the following relief:

24       4.1 For judgment against each of the defendants, jointly and  
25       severally, for monetary special damages in an amount to be

1       determined at trial.

2       4.2 For judgment against each of the defendants, jointly and  
3           severally, for general compensatory damages in an amount to be  
4           determined at trial;

5       4.3 For judgment for punitive damages against each of the  
6           defendants, jointly and severally, in an amount to be  
7           determined at trial;

8       4.4 For attorney fees and costs authorized by statute, including  
9           reasonable attorney's fees pursuant to 42 U.S.C. §1988;

10      4.5 For such other relief as the court deems just.

11      Dated this 10th day of March, 2014.



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